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REPLY TO Wilmington Office

December 22, 2005

VIA ELECTRONIC FILING

The Honorable Gregory M. Sleet
United States District Court
for the District of Delaware
844 N. King Street
Room 2124, Lockbox 19
Wilmington, Delaware 19801

Re: *Dyson Technology Limited et al. v. Maytag Corporation*,
Civil Action No. 05-434-GMS

Dear Judge Sleet:

Enclosed please find the Supplemental Affidavit of David Baker, which Maytag presents in response to the Supplemental Affidavit of Jeffrey Hyman, offered by Plaintiffs under cover of their letter dated December 12, 2005. Maytag stands ready to provide what other assistance the Court might desire in this matter. For the reasons presented in Maytag's earlier opposition, and this present supplementation, the extraordinary remedy of a preliminary injunction is clearly not warranted.

Respectfully submitted,



Francis DiGiovanni

Enclosure

cc: Clerk of the Court (by electronic filing)
John W. Shaw, Esquire (by electronic filing and e-mail)
David B. Tulchin, Esquire (by e-mail)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DYSON TECHNOLOGY LIMITED and)	
DYSON, INC.,)	
)	
Plaintiffs,)	CIVIL ACTION NO. 05-05-434
)	
v.)	
)	
MAYTAG CORPORATION,)	
)	
Defendant.)	

SUPPLEMENTAL AFFIDAVIT OF DAVID BAKER

I, DAVID BAKER, being first duly sworn, hereby depose and say.

1. I am the same David Baker who submitted my Affidavit earlier in this matter, on or about August 29, 2005 (Doc. No. 30).
2. I have reviewed the Supplemental Affidavit of Jeffrey Hyman, filed herein, and present this Affidavit in response thereto.
3. To a large extent, Mr. Hyman's Affidavit simply revisits his earlier Affidavit in this matter and, in that regard, my response can be found in my original Affidavit. I respond hereto only in regard to what might constitute new observations by Mr. Hyman with regard to Maytag's sale of the Hoover Fusion vacuum cleaner through the Wal-Mart chain.


4. Mr. Hyman proclaims that Dyson has had success with “early adopters,” but a lack of success in the “mass market.” This is simply not the case. Dyson has been selling in the U.S. market for over 3 years, and presently is the leading brand in retail dollars in the U.S., per Equifax, a national probability survey to which Maytag subscribes and upon which it relies. Dyson’s penetration and position in the U.S. market goes way beyond “early adopters.”

5. Per Equifax, the average selling price of the Dyson vacuum cleaner in the U.S. market during the third quarter of 2005 was \$444, as compared to \$149 for Hoover (Maytag), \$88 for Bissell, \$85 for Royal, \$99 for Eureka and \$133 for Kenmore. I have observed the Dyson unit in Wal-Mart, priced at \$399. But, vacuum cleaners at that price point are generally unsuited for the “mass market” served by Wal-Mart and the like.

6. Based upon my extensive experience in sales and marketing of floorcare products, it is clear that Dyson’s failure to reach its expectations is primarily the result of unrealistic expectations. It is elementary that high end products rarely become the product of highest sales velocity (volume of unit sales) in discount chains.

7. Hoover is not Dyson's only competitor in Wal-Mart or the "mass market." A multitude of vacuum cleaners from a broad range of sources can be found in Wal-Mart stores and other discount chains at any given time. Bissell, Eureka, Royal (Dirt Devil), Panasonic, Shark, Euro-Pro and a host of others also sell vacuum cleaners through this commerce channel. All of them sell at a price point well below that of Dyson.

FURTHER AFFIANT SAYETH NAUGHT


David Baker

County of Summit)
)
State of Ohio)

Sworn to and subscribed in my presence this 22 day of December 2005.


Notary Public

MELINDA A. HUNTER, Notary Public
Residence - Portage County
Statewide Jurisdiction

My Commission Expires 5-30-2006

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